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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest Alleging Solicitation Specifications Were Unduly Restrictive]

FILE: B-202099

DATE: April 24, 1981

MATTER OF: Caravelle Industries, Inc.

DIGEST:

1. GAO will no longer review complaints regarding procurements by Federal grantees which are not filed within reasonable time. Prompt filing is required so that issues can be decided while it is still practicable to take action if warranted.
2. Complaint alleging that Federal grantee's specifications for particular type of bus washer unduly restrict competition, filed more than two months after bid opening, was not filed within reasonable time and therefore will be dismissed. In order to be considered filed within reasonable time, future complaints based on alleged improprieties in grantee solicitations which are apparent prior to bid opening or receipt of initial proposals must be filed in accordance with time standards established for bid protests in direct Federal procurements.
3. GAO is not aware of any regulation requiring notice to unsuccessful bidders in procurements by Federal grantees; even in direct Federal procurement, lack of notice constitutes mere procedural irregularity which, in absence of prejudice, does not affect otherwise proper award.

Caravelle Industries, Inc. { complains concerning award of a contract } for furnishing and installing a drive-through vehicle (bus) washing system { by } the Fairmont Marion County Transit Authority, Fairmont, West Virginia. The system is being { funded by an Urban Mass Transportation Administration grant which will cover 75 percent of total costs. }

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[Caravelle alleges that the specifications in the solicitation issued by the transit authority were unduly restrictive, in that they were provided by and identical to those for a system manufactured by N/S Corporation, the low bidder.] [Caravelle also alleges that transit authority personnel, after viewing its "roll over" model, changed the specifications to require a drive-through system. [Caravelle further complains that although it submitted a bid bond on December 3, 1980, it was not formally advised of the award to N/S Corporation until its check was returned in late January.]

[We decline to consider the first issue because we believe the complaint concerning the specifications was not filed within a reasonable time.] (Bid opening was December 5, 1980, but the complaint was not received in our Office until February 6, 1981.)

We have often stated that the timeliness provisions of our Bid Protest Procedures, 4 C.F.R. § 20.2 (1980), do not apply to complaints regarding procurements by Federal grantees. Rather, these are governed by our Public Notice appearing at 40 Fed. Reg. 42406 (1975), which states "It is important that complaints be received as promptly as possible," but sets no specific times for filing.

Because we did not impose specific time limits in the Public Notice, we have considered complaints which clearly would be untimely under the Bid Protest Procedures. For example, Johnson Controls, Inc., B-188488, August 3, 1977, 77-2 CPD 75, involved an award made on May 28, 1976, but the complaint was not filed until March 4, 1977. Somewhat more recently, in Burroughs Corporation, B-194168, November 28, 1979, 79-2 CPD 376, in a complaint involving a July 1978 solicitation by a Department of Labor grantee, the complainant alleged, among other things, that a 1977 solicitation for the same equipment should not have been canceled. We stated that this objection would have more appropriately been presented when the first request for proposals was canceled, rather than after rejection of the complainant's proposal under the second, although we did go on to decide that the cancellation and resolicitation with revised technical specifications were proper.

The complaints in these cases were post-award; neither was sustained. If there had been some legal basis for doing so, however, our ability to provide an effective remedy would have depended upon such countervailing considerations as degree of performance, delay in the delivery

of needed goods and services, termination costs, and effect upon the integrity of the competitive system of corrective action after bids had been opened and prices exposed.

In light of these considerations, ~~§~~our Bid Protest Procedures require protests involving alleged deficiencies which are apparent on the face of a solicitation to be filed either before bid opening or before the closing date for receipt of initial proposals. In all other cases, a protest must be filed within 10 days of adverse agency action, in the case of a protest initially lodged with the contracting agency, or 10 days after the basis of protest is known or should have been known. ~~§~~

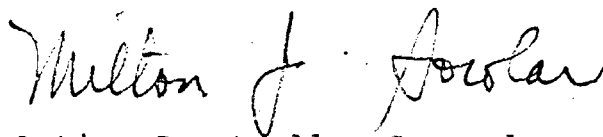
While those time limitations are not literally applicable here, and while it may not, in all cases, be appropriate to establish strict time limitations for grant complaints, we believe such complaints must be filed within a reasonable time. The purpose is the same as for bid protests--to enable us to decide an issue while it is still practicable to take action if warranted. Page Airways, Incorporated and Omni Coast International, Inc., B-197896, June 5, 1980, 80-1 CPD 391; United States Contracting Corporation, B-198095, June 27, 1980, 80-1 CPD 446.

In Caravelle's case, we do not believe that filing of a complaint regarding specifications more than two months after bid opening is filing within a reasonable time. Therefore, we are dismissing this portion of the complaint without requesting or receiving a report from the grantor agency. Moreover, ~~§~~since it is only a complaint filed before opening that would allow review of the allegedly restrictive specifications and, if necessary, amendment of the solicitation before prices were made public and performance begun, we believe that in most instances the only reasonable time for complaints regarding solicitation deficiencies to be filed is that required by the Bid Protest Procedures, i.e., prior to bid opening or the time for receipt of proposals. We shall apply this standard in the future. To the extent that our prior decisions are inconsistent with this one, they will no longer be followed.

[As for the transit authority's delay in returning Caravelle's bid bond and notifying it of the award, we are

not aware of any regulation which requires notice to unsuccessful bidders in procurements by Federal grantees. We note, however, that even in a direct Federal procurement, lack of notice constitutes a mere procedural irregularity which, in the absence of prejudice, does not affect the validity of an otherwise proper award. } A.R. & S Enterprises, Inc., B-197303, July 8, 1980, 80-2 CPD 17.

(The complaint is dismissed in part and denied in part.)



Acting Comptroller General
of the United States